

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Olli-Pekka Pohjola et al.
Title: SECURE UPSTREAM
TRANSMISSION IN PASSIVE
OPTICAL NETWORKS
Appl. No.: 10/717,601
Filing Date: 11/21/2003
Examiner: Hanh Phan
Art Unit: 2613
Confirmation 8207
Number:

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant is in receipt of the Notice of Allowance for the above-captioned application. Applicant disagrees with the Determination of Patent Term Adjustment (PTA) under 35 U.S.C. § 154(b) and presents the following facts per the procedure set forth in 37 C.F.R. § 1.705(b) to support their contention that the patent term adjustment should be 1029 days instead of 530 days as calculated by the United States Patent and Trademark Office (PTO).

The Patent Office determined that the patent was entitled to 530 days of PTA. Applicants believe that this PTA determination was made in accordance with the “Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)” published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office's interpretation of the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of "overlap" are limited to "periods of time . . . [that] occur on the same day." *Wyeth*, slip op. at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." *Id.*

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 1029 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B): 1119 days

(b) Total Applicant delay: 90 days

Final PTA Determination: 1029 days

Applicants therefore respectfully request that the patent be accorded 1029 days PTA.

The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Christopher L. Kalafut', is written over a horizontal line.

Date March 10, 2009

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Christopher L. Kalafut
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Patent Term Adjustment Calculation System

Add a new event to this case

Docket Number: 088245-2354

Application Number: 10/717601

Patent Number: N/A

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Application Filing Date	11/21/2003	0		
	14 month From Application date	01/21/2005	427		
Edit Delete	Non-Final Office Action	10/03/2006	1,047	620	
	3 Year Period Starts	11/21/2006	1,096		
	Non-Final Office Action + 3 months	01/03/2007	1,139		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	02/05/2007	1,172		33
Edit Delete	IDS under 1.704(c)(8) filed at PTO	03/06/2007	1,201		29
Edit Delete	Non-Final Office Action	05/17/2007	1,273		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	08/17/2007	1,365		
Edit Delete	Notice of Allowance	10/09/2007	1,418		
Edit Delete	Issue Fee Paid	01/08/2008	1,509		
Edit Delete	Request for Withdrawal from Issuance	04/03/2008	1,595		
Edit Delete	Request For Continued Examination	04/03/2008	1,595		
	3 Year Period Stopped	04/03/2008	1,595	499	
Edit Delete	Withdrawn from Issuance by PTO	04/04/2008	1,596		
Edit Delete	Non-Final Office Action	06/18/2008	1,671		
	Non-Final Office Action + 3 months	09/18/2008	1,763		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	10/16/2008	1,791		28
Edit Delete	Notice of Allowance	12/11/2008	1,847		
	Notice of Allowance + 3 months	03/11/2009	1,937		
	Projected Patent Grant Date	06/23/2009	2,041		

Totals: 1,119

PTA: 925

1,119

- 90

1029

days

allowance

(70 days)

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104

194

- 104

(70 days)

Version: 3.01.14

LOGIN: Sharon Dudley

IP: 10.24.4.200

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